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8 Attorneys for ByteShield, Inc., Defendant AND Counter-  
Complainant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 MICROMEDIA, B.V., a corporation of The  
Netherlands, dba MICROMEDIA A.D.S.,

**Plaintiff,**

V.

## BYTESHIELD, INC.,

Defendant.

Case No.: 10-CV-03861 EDL

**STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION**

Dept: E

Judge: Hon. Elizabeth D. Laporte  
Complaint Filed: August 27, 2010

18 | BYTESHIELD, INC.,

## Counter-Complainant,

20

MICROMEDIA, B.V., a corporation of The  
Netherlands, dba MICROMEDIA A.D.S.,

## Counter-Defendant.

Plaintiff and Counter-Defendant Micromedia, B.V. and Defendant and Counter-  
Complainant ByteShield, Inc. (collectively, “the Parties”), respectively submit the following  
Stipulated Protective Order for Litigation Involving Highly Sensitive Confidential Information for  
consideration and entry by the Court.

1       1.     PURPOSES AND LIMITATIONS

2              Disclosure and discovery activity in this action are likely to involve production of  
 3 confidential, proprietary, or private information for which special protection from public disclosure  
 4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
 5 the Parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
 6 Order. The Parties acknowledge that this Order does not confer blanket protections on all  
 7 disclosures or responses to discovery and that the protection it affords from public disclosure and use  
 8 extends only to the limited information or items that are entitled to confidential treatment under the  
 9 applicable legal principles. The Parties further acknowledge, as set forth in Section 12.4, below, that  
 10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
 11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be  
 12 applied when a party seeks permission from the court to file material under seal.

13       2.     DEFINITIONS

14       2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
 15 information or items under this Order.

16       2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it  
 17 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
 18 of Civil Procedure 26(c).

19       2.3     Counsel: attorneys who are not employees of a party to this action but are  
 20 retained to represent or advise a party to this action and have appeared in this action on behalf of that  
 21 party or are affiliated with a law firm which has appeared on behalf of that party.

22       2.4     Designating Party: a Party or Non-Party that designates information or items  
 23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
 24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25       2.5     Disclosure or Discovery Material: all items or information, regardless of the  
 26 medium or manner in which it is generated, stored, or maintained (including, among other things,  
 27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
 28 responses to discovery in this matter.

1           2.6    Expert: a person with specialized knowledge or experience in a matter  
 2 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert  
 3 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a  
 4 Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a  
 5 Party or of a Party's competitor.

6           2.7    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
 7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party  
 8 or Non-Party would create a substantial risk of serious harm that could not be avoided by less  
 9 restrictive means.

10          2.8    Non-Party: any natural person, partnership, corporation, association, or other  
 11 legal entity not named as a Party to this action.

12          2.9    Party: any party to this action, including all of its officers, directors,  
 13 employees, consultants, retained experts, and Counsel (and their support staffs).

14          2.10   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 15 Material in this action.

16          2.11   Professional Vendors: persons or entities that provide litigation support  
 17 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
 18 organizing, storing, or retrieving data in any form or medium) and their employees and  
 19 subcontractors.

20          2.12   Protected Material: any Disclosure or Discovery Material that is designated  
 21 as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

22          2.13   Receiving Party: a Party that receives Disclosure or Discovery Material from  
 23 a Producing Party.

24          3.      SCOPE

25           The protections conferred by this Stipulation and Order cover not only Protected  
 26 Material (as defined above), but also (1) any information copied or extracted from Protected  
 27 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
 28 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected

1 Material. However, the protections conferred by this Stipulation and Order do not cover the  
 2 following information: (a) any information that is in the public domain at the time of disclosure to a  
 3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
 4 result of publication not involving a violation of this Order, including becoming part of the public  
 5 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
 6 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
 7 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
 8 Protected Material at trial shall be governed by a separate agreement or order.

9       4.      DURATION

10             Even after final disposition of this litigation, the confidentiality obligations imposed  
 11 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
 12 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
 13 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
 14 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 15 including the time limits for filing any motions or applications for extension of time pursuant to  
 16 applicable law.

17       5.      DESIGNATING PROTECTED MATERIAL

18             5.1     Exercise of Restraint and Care in Designating Material for Protection. Each  
 19 Party or Non-Party that designates information or items for protection under this Order must take  
 20 care to limit any such designation to specific material that qualifies under the appropriate standards.  
 21 To the extent it is practical to do so, the Designating Party must designate for protection only those  
 22 parts of material, documents, items, or oral or written communications that qualify – so that other  
 23 portions of the material, documents, items, or communications for which protection is not warranted  
 24 are not swept unjustifiably within the ambit of this Order.

25             Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 27 unnecessarily encumber or retard the case development process or to impose unnecessary expenses  
 28 and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or  
 2 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of the  
 3 information or item warrant protection, the Producing Party, to the extent practicable, shall identify  
 4 the protected portion(s) and specify the level of protection being asserted.

5       5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
 6 to designate qualified information or items does not, standing alone, waive the Designating Party's  
 7 right to secure protection under this Order for such material. Upon timely correction of a  
 8 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
 9 accordance with the provisions of this Order.

10       6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

11       6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation  
 12 of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
 13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
 14 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
 15 confidentiality designation by electing not to mount a challenge promptly after the original  
 16 designation is disclosed.

17       6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
 18 process by providing written notice of each designation it is challenging and describing the basis for  
 19 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice  
 20 must recite that the challenge to confidentiality is being made in accordance with this specific  
 21 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith  
 22 and must begin the process by conferring directly within 14 days of the date of service of notice. In  
 23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
 24 designation was not proper and must give the Designating Party an opportunity to review the  
 25 designated material, to reconsider the circumstances, and, if no change in designation is offered, to  
 26 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of  
 27 the challenge process only if it has engaged in this meet and confer process first or establishes that  
 28 the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

1           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
 2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
 3 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
 4 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
 5 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
 6 competent declaration affirming that the movant has complied with the meet and confer  
 7 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
 8 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
 9 automatically waive the confidentiality designation for each challenged designation. In addition, the  
 10 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
 11 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
 12 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
 13 competent declaration affirming that the movant has complied with the meet and confer  
 14 requirements imposed by the preceding paragraph.

15                 The burden of persuasion in any such challenge proceeding shall be on the  
 16 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or  
 17 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file  
 19 a motion to retain confidentiality as described above, all parties shall continue to afford the material  
 20 in question the level of protection to which it is entitled under the Producing Party's designation  
 21 until the court rules on the challenge.

22           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

23           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
 24 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
 25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
 26 disclosed only to the categories of persons and under the conditions described in this Order. When  
 27 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13  
 28 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a location  
 2 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

3       7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
 4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 5 disclose any information or item designated “CONFIDENTIAL” only to:

6           (a)     the Receiving Party’s Counsel in this action, as well as employees of said  
 7 Counsel to whom it is reasonably necessary to disclose the information for this litigation and who  
 8 have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
 9 A;

10          (b)     the officers, directors, and employees of the Receiving Party to whom  
 11 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
 12 Agreement to Be Bound” (Exhibit A);

13          (c)     Experts (as defined in this Order) of the Receiving Party to whom disclosure  
 14 is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
 15 Agreement to Be Bound” (Exhibit A);

16          (d)     the court and its personnel;

17          (e)     court reporters and their staff, professional jury or trial consultants, and  
 18 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
 19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20          (f)     during their depositions, witnesses in the action to whom disclosure is  
 21 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
 22 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
 23 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
 24 separately bound by the court reporter and may not be disclosed to anyone except as permitted under  
 25 this Stipulated Protective Order.

26          (g)     the author or recipient of a document containing the information or a  
 27 custodian or other person who otherwise possessed or knew the information.

1           7.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2       Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
 3 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

5               (a)     the Receiving Party’s Counsel in this action, as well as employees of said  
 6 Counsel to whom it is reasonably necessary to disclose the information for this litigation and who  
 7 have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
 8 A;

9               (b)     Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
 10 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
 11 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been  
 12 followed;

13               (c)     the court and its personnel;

14               (d)     court reporters and their staff, professional jury or trial consultants, and  
 15 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
 16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

17               (e)     the author or recipient of a document containing the information or a  
 18 custodian or other person who otherwise possessed or knew the information.

19           7.4     Procedures for Approving or Objecting to Disclosure of “HIGHLY  
 20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

21               (a)     Unless otherwise ordered by the court or agreed to in writing by the  
 22 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
 23 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 24 ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that  
 25 (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 26 ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
 27 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a  
 28 copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies

1 each person or entity from whom the Expert has received compensation or funding for work in his or  
 2 her areas of expertise or to whom the expert has provided professional services, including in  
 3 connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6) identifies (by name  
 4 and number of the case, filing date, and location of court) any litigation in connection with which the  
 5 Expert has offered expert testimony, including through a declaration, report, or testimony at a  
 6 deposition or trial, during the preceding five years.

7                         (b) A Party that makes a request and provides the information specified in the  
 8 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert  
 9 unless, within 14 days of delivering the request, the Party receives a written objection from the  
 10 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

11                         (c) A Party that receives a timely written objection must meet and confer with the  
 12 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
 13 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
 14 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with  
 15 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion  
 16 must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to  
 17 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
 18 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
 19 must be accompanied by a competent declaration describing the parties' efforts to resolve the matter  
 20 by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth  
 21 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

22                         In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of  
 23 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
 24 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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 27                         <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
 28 party, then the Expert should provide whatever information the Expert believes can be disclosed  
 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1       8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 2     OTHER LITIGATION

3           If a Party is served with a subpoena or a court order issued in other litigation that compels  
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY  
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

6           (a)    promptly notify in writing the Designating Party. Such notification shall  
 7 include a copy of the subpoena or court order;

8           (b)    promptly notify in writing the party who caused the subpoena or order to issue  
 9 in the other litigation that some or all of the material covered by the subpoena or order is subject to  
 10 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

11          (c)    cooperate with respect to all reasonable procedures sought to be pursued by  
 12 the Designating Party whose Protected Material may be affected.

13           If the Designating Party timely seeks a protective order, the Party served with the  
 14 subpoena or court order shall not produce any information designated in this action as  
 15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
 16 determination by the court from which the subpoena or order issued, unless the Party has obtained  
 17 the Designating Party’s permission. The Designating Party shall bear the burden and expense of  
 18 seeking protection in that court of its confidential material – and nothing in these provisions should  
 19 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
 20 directive from another court.

21       9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
 22     THIS LITIGATION

23           (a)    The terms of this Order are applicable to information produced by a Non-  
 24 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 25 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this  
 26 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions  
 27 should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1       11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
 2 **PROTECTED MATERIAL**

3           When a Producing Party gives notice to Receiving Parties that certain inadvertently  
 4 produced material is subject to a claim of privilege or other protection, the obligations of the  
 5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
 6 is not intended to modify whatever procedure may be established in an e-discovery order that  
 7 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)  
 8 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or  
 9 information covered by the attorney-client privilege or work product protection, the parties may  
 10 incorporate their agreement in the stipulated protective order submitted to the court.

11       12. **MISCELLANEOUS**

12       12.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person  
 13 to seek its modification by the court in the future.

14       12.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective  
 15 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
 16 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
 17 Party waives any right to object on any ground to use in evidence of any of the material covered by  
 18 this Protective Order.

19       12.3 **Export Control.** Disclosure of Protected Material shall be subject to all  
 20 applicable laws and regulations relating to the export of technical data contained in such Protected  
 21 Material, including the release of such technical data to foreign persons or nationals in the United  
 22 States or elsewhere. The Producing Party shall be responsible for identifying any such controlled  
 23 technical data, and the Receiving Party shall take measures necessary to ensure compliance.

24       12.4 **Filing Protected Material.** Without written permission from the Designating  
 25 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
 26 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
 27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
 28 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at

1 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
 2 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
 3 protection under the law. If a Receiving Party's request to file Protected Material under seal  
 4 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the  
 5 Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise  
 6 instructed by the court.

7       13. FINAL DISPOSITION

8       Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
 9 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
 10 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
 11 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
 12 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
 13 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
 14 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
 15 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
 16 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
 17 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
 18 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
 19 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
 20 and expert work product, even if such materials contain Protected Material. Any such archival  
 21 copies that contain or constitute Protected Material remain subject to this Protective Order as set  
 22 forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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4 DATED: January 25, 2011  
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7 WASSERMAN, COMDEN, CASSELMAN &  
8 ESENSTEN, L.L.P.  
9 ROBERT L. ESENSTEN  
10 KATHRYN S. MARSHALL  
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13 By: /s/ Kathryn S. Marshall  
14 KATHRYN S. MARSHALL  
15 Attorneys for Plaintiff, MICROMEDIA B.V.,  
16 a corporation of The Netherlands, *dba*  
17 MICROMEDIA A.D.S.  
18  
19

20 DATED: January 25, 2011  
21  
22

23 DUANE MORRIS, LLP  
24 STEPHEN H. SUTRO  
25 JENNIFER B. FISHER  
26 JESSICA ARLAUCKAS BOHL  
27  
28

29 By: /s/ Jennifer B. Fisher  
30 JENNIFER B. FISHER  
31 Attorneys for Defendant, BYTESHIELD,  
32 INC.  
33  
34

35 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
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38 DATED: January 28, 2011  
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41   
42 Elizabeth Laporte  
43 United States Magistrate Judge  
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## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that  
I have read in its entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Northern District of California on [date] in the case of  
\_\_\_\_\_ ***Micromedia B.V. v. ByteShield, Inc., Case No. 3:10-cv-03861-EDL***. I  
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and punishment  
in the nature of contempt. I solemnly promise that I will not disclose in any manner any information  
or item that is subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] as my  
California agent for service of process in connection with this action or any proceedings related to  
enforcement of this Stipulated Protective Order.

21 Date: \_\_\_\_\_

22 || City and State where sworn and signed:

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
[Signature]